

**BEFORE THE ILLINOIS COMMERCE COMMISSION**

**Docket No. 01-0614**

**Surrebuttal Testimony of Michael D. Silver  
On Behalf of Ameritech Illinois**

**Ameritech Illinois Exhibit 3.2**

**November 21, 2001**

EXHIBIT 3.2  
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1                                   **SURREBUTTAL TESTIMONY OF**  
2                                   **MICHAEL D. SILVER**  
3                                   **ON BEHALF OF AMERITECH ILLINOIS**

4  
5   **I.     INTRODUCTION**  
6

7   **Q.     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

8   A.     My name is Michael D. Silver. My business address is 350 N. Orleans, Chicago,  
9           Illinois 60654.

10  
11   **Q.     HAVE YOU PREVIOUSLY SUBMITTED DIRECT TESTIMONY AND**  
12           **REBUTTAL TESTIMONY IN THIS PROCEEDING?**

13   A.     Yes, I have.

14  
15   **II.    PURPOSE AND ORGANIZATION OF TESTIMONY**  
16

17   **Q.     WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

18   A.     The purpose of my surrebuttal testimony is to respond to the positions presented  
19           by:

- 20           • Mr. Joseph Gillan sponsored by AT&T Communications of Illinois ("AT&T"),  
21           WorldCom Inc. ("WorldCom"), DataNet Systems, L.L.C., the Illinois Public  
22           Telephone Association, and the PACE Coalition;
- 23           • Mr. Christopher L. Graves sponsored by the Telecommunications Division of  
24           the Illinois Commerce Commission ("Staff"); and
- 25           • Dr. James Zolnierrek sponsored by the Telecommunications Division of the  
26           Illinois Commerce Commission ("Staff").

27 Specifically, I will address the rebuttal testimony as it relates to the following  
28 issues:

- 29 1. Unbundled Local Switching with Shared Transport (Ill. C. C. No. 20, Part 19,  
30 Section 21);  
31 2. Bona Fide Request Process (Ill. C. C. No. 20, Part 19, Section 1);  
32 3. The provision of rate schedules (Ill. C. C. No. 20, Part 19, Section 1); and  
33 4. Resale (Ill C.C. No. 20, Part 22, Section 1).

34  
35 **III. UNBUNDLED LOCAL SWITCHING WITH SHARED TRANSPORT**  
36 **("ULS-ST")**  
37

38 **Q. WHAT IS THE FUNDAMENTAL ISSUE CONCERNING ULS-ST AS**  
39 **REFLECTED IN THE REBUTTAL TESTIMONY OF STAFF WITNESS**  
40 **GRAVES?**

41 A. Mr. Graves does not want Ameritech to charge its normal switched access rates  
42 when an intraLATA toll call is originated by a CLEC using the UNE platform and  
43 is terminated to an Ameritech customer. Mr. Graves erroneously believes that  
44 something in 13-801 has changed the very clear rules that permit Ameritech to  
45 collect switched access charges in this situation.

46

47 **Q. WHY IS MR. GRAVES WRONG?**

48 A. To begin with, intraLATA toll service is, by definition, not local service. If a  
49 CLEC chooses to carry toll traffic over the Ameritech network, it becomes the toll  
50 provider (access carrier) of record. Because it is the access carrier of record, it is  
51 responsible for any terminating access charges that occur, regardless where the

52 call terminates. The CLEC is the interexchange carrier, so therefore it is the  
53 CLEC's responsibility to compensate the ILEC whose network is used to  
54 complete the call.

55

56 **Q. IN LINES 543-48, MR. GRAVES SAYS THAT AMERITECH'S ULS-ST**  
57 **TARIFF HAS A LOCAL TERMINATION RATE IN IT THAT SHOULD**  
58 **APPLY TO TERMINATION OF INTRALATA TOLL CALLS. HOW DO**  
59 **YOU RESPOND?**

60 A. Mr. Graves is making an unwarranted leap of logic. While it is true that  
61 Ameritech's ULS-ST tariff has a rate in it for the termination of a call originated  
62 by a CLEC using ULS-ST, that rate applies only to local calls – not the  
63 intraLATA toll calls that are at issue here. The language that Mr. Graves quotes  
64 from Ameritech's ULS-ST tariff is clearly limited to local calls and that language  
65 offers absolutely no support for the proposition Mr. Graves asserts. Reciprocal  
66 compensation is for *local traffic*, not intraLATA toll. Terminating access charges,  
67 on the other hand, have been designed to permit LECs to recover their costs of  
68 terminating toll calls. It makes no difference whether the originating toll provider  
69 is a CLEC or an IXC. The terminating LEC, be it Ameritech, a CLEC or another  
70 ILEC, is entitled to its terminating access.

71

72 **Q. MR. GRAVES ALSO ARGUES THAT THE LANGUAGE OF 13-801(d)(4)**  
73 **DOES NOT ALLOW AMERITECH TO CHARGE ITS SWITCHED**

**ACCESS RATES WHEN IT TERMINATES A TOLL CALL FROM A  
CLEC USING ULS-ST. HOW DO YOU RESPOND?**

A. Mr. Graves' reading of 13-801(d)(4) makes no sense. I grant you that CLECs are permitted to use the Ameritech UNE platform to provide service without the use of "any other facilities or functionalities". However, this only means, for example, that CLECs cannot be required to collocate to use the UNE platform. It does not mean that CLECs can use whatever they want from Ameritech's network at TELRIC rates, and it does not mean that Ameritech's switched access is instantly transformed to TELRIC rates for just a chosen class of CLECs -- those who use the UNE Platform.

**Q. ARE THERE ANY CONCERNS WITH MR. GRAVES USE OF HIS  
PROPOSED SCHEDULE CLG-1?**

A. Ameritech has several concerns with schedule CLG-1. First, there is some implication in lines 515-26 of Mr. Graves' testimony that Ameritech created the 25 call flow diagrams that Mr. Graves has attached to his testimony. Ameritech did not. Second, there is an implication that these are the same call flow diagrams that Mr. Hampton submitted to the Commission on behalf of Ameritech in Docket 00-0700. They are not. While Mr. Hampton did indeed have call flow diagrams in his testimony, that is not what Mr. Graves is submitting in this docket. In particular, Mr. Graves has inserted rates and rate elements that Mr. Hampton did not have in his diagrams. In addition, Mr. Hampton had included comments

concerning various problems with the call flow diagrams, which Mr. Graves has omitted.

Third, the issue at hand is whether Ameritech can charge its normal switched access rates to terminate a toll call that a CLEC originates using ULS-ST as a component of the UNE platform. Only one of the 25 diagrams submitted by Mr. Graves deals with that situation – call flow 17. Just so the record is clear, the rate elements and rate levels shown on call flow 17 are the proposals of Staff and not Ameritech. In particular, Ameritech does not agree that any “reciprocal compensation” rate element is applicable in this situation. A switch access termination rate should be charged instead.

In short, the applicable rates and rate elements for a CLEC’s use of ULS-ST are contained in the ULS-ST tariff. Normal switched access rates apply to the termination of toll calls originated using ULS-ST. Those switched access rates are found in Ameritech’s access tariffs. I see no need to add anything to Ameritech’s tariff from the call flow diagrams.

**Q. DO YOU HAVE ANY OTHER CONCERNS ABOUT THE CALL FLOW DIAGRAMS?**

**A.** Mr. Graves states that the call flow scenarios were developed in 1997 by the Ordering and Billing Forum (OBF). I am concerned by Mr. Graves’ suggestion that a group, working on a project in 1997, would be able to produce

119 comprehensive information concerning ULS-ST, a product which was not at the  
120 time identified, required, or developed by any ILEC.

121

122 **Q. MR. GRAVES MENTIONS DOCKET 00-0700. DO YOU HAVE ANY**  
123 **COMMENTS?**

124 **A.** My only concern is that the parties and the Commission not attempt to re-litigate  
125 in this proceeding any of the issues that are being addressed in Docket 00-0700.

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140 **Q. WHAT IS THE FUNDAMENTAL ISSUE CONCERNING ULS-ST AS**  
141 **REFLECTED IN THE REBUTTAL TESTIMONY OF MR. GILLAN?**



142 A. Mr. Gillan mistakenly believes that IXC's should be able to use ULS-ST (as a  
143 component of a UNE Platform) to provide exchange access services to  
144 interexchange carriers when the CLEC is not providing local service to the end  
145 user.

146

147 **Q. MR. GILLAN CRITICIZES YOUR VIEW THAT CLECS ARE NOT**  
148 **PERMITTED TO USE ULS-ST (STANDING ALONE OR AS AN**  
149 **COMPONENT OF UNE PLATFORM) TO PROVIDE SWITCHED**  
150 **ACCESS SERVICES TO INTEREXCHANGE CARRIERS OR OTHER**  
151 **CARRIERS. (GILLAN REBUTTAL, P. 13). IS IT TRUE THAT**  
152 **AMERITECH ILLINOIS HAS OFFERED NO "POLICY**  
153 **JUSTIFICATION" FOR THIS POSITION?**

154 A. No. I have cited in my testimony clear FCC precedent, as it appears in FCC  
155 Docket No. 96-98, Third Order on Consideration (Shared Transport Order),  
156 paragraph 52. A clear enunciation of this rule is also contained in FCC Docket  
157 No. 96-98, Order on Reconsideration, paragraph 13 (released September 17,  
158 1996). There, the FCC noted:

159 We thus make clear that, as a practical matter, a carrier that purchases an  
160 unbundled switching element will not be able to provide solely  
161 interexchange service or solely access service to an interexchange carrier.  
162 A requesting carrier that purchases an unbundled local switching element  
163 for an end user may not use that switching element to provide  
164 interexchange service and users for whom that requesting carrier does not  
165 also provide local exchange service.

166

167 The FCC policy behind this limitation is the same policy that limits the  
168 substitution of UNEs for special access. Namely, the FCC is concerned that this

169 substitution would imperil the universal service subsidies implicit in the access  
170 services provided by incumbent LECs. FCC Docket No. 00-65 (Texas 271 Order)  
171 (225, Released June 30, 2000). The obligations imposed on local exchange  
172 carriers to provide carrier of last resort service, and, more importantly, to provide  
173 residential service in less populated areas at rates that do not cover costs, are  
174 supported by the current access charge regime. Mr. Gillan's proposals to  
175 substitute UNEs for switched access services have universal service implications  
176 far beyond this docket.

177  
178 **Q. MR. GILLAN STATES THAT HE STRUGGLES TO UNDERSTAND**  
179 **AMERITECH ILLINOIS' POSITION THAT SECTION 13-801**  
180 **PROHIBITS THE UNLIMITED USE OF ULS-ST. CAN YOU HELP**  
181 **CLARIFY?**

182 **A.** I can only repeat my testimony that Section 13-801(d)(4) authorizes a CLEC to  
183 purchase ULS-ST as a component of a UNE platform and use it to provide a  
184 variety of services, but all of the services provided by the CLEC using the UNE  
185 platform must be provided to the CLEC's "end users or pay telephone service  
186 providers." A CLEC is simply not entitled to use the UNE platform to provide  
187 service to anyone else, such as an interexchange carrier or other carriers. If Mr.  
188 Gillan is suggesting on pages 13 and 14 of his Rebuttal Testimony that CLECs  
189 have absolutely no intention to use ULS-ST to provide switched access to  
190 interexchange carriers, then he should clarify that matter and say so on the record.  
191 Without such a definitive statement, it appears that Mr. Gillan fully intends to

192 leave the door wide open to this possible (though prohibited) use. The  
193 Commission should clarify in this docket that the use of ULS-ST proposed by Mr.  
194 Gillan is prohibited by clear FCC precedent and by Section 13-801(d)(4) of the  
195 PUA.

196

197 **Q. DOES MR. GILLAN GIVE ANY INDICATION OF THE CLECS'**  
198 **INTENTION TO USE ULS-ST TO PROVIDE SWITCHED ACCESS**  
199 **SERVICE WHEN THE CLEC DOES NOT ALSO PROVIDE LOCAL**  
200 **SERVICE TO THE END USER?**

201 A. Yes. In footnote 23 of page 14, he continues to insist that a CLEC can make  
202 whatever use of ULS-ST that it desires, including making it available to an  
203 interexchange carrier as a substitute for switched access.

204

205 **Q. HOW DO YOU RESPOND TO MR. GILLAN'S STATEMENT THAT**  
206 **"THERE IS NOTHING IN THE ACT THAT GIVES COVER TO**  
207 **AMERITECH ILLINOIS' PROPOSED RESTRICTION ON HOW A CLEC**  
208 **USES ULS-ST, ESPECIALLY WHEN PART OF A COMPLETE**  
209 **PLATFORM" (GILLAN REBUTTAL, P. 14)?**

210 A. My Direct Testimony and my Rebuttal Testimony could not have been clearer.  
211 Section 13-801(d)(4) explicitly supports Ameritech Illinois' proposed restriction  
212 that a CLEC only be permitted to use ULS-ST as a component of a UNE platform  
213 when the CLEC is offering services "to its end users or pay telephone service  
214 provider."

215

216     **Q.     AT PAGE 14, FOOTNOTE 24, MR. GILLAN ARGUES THAT SECTION**  
217           **13-801(D)(4) APPLIES TO MORE THAN JUST A UNE PLATFORM. DO**  
218           **YOU AGREE?**

219     **A.     I am not a lawyer, and the question you ask is ultimately a question of law.**  
220           **However, I do note that Section 13-801(d)(4) is limited to the topic of how a**  
221           **carrier may use a “network element platform.” It does not, either explicitly or by**  
222           **implication, address other arrangements such as local point-to-point and data**  
223           **circuits.**

224

225     **IV.     BONA FIDE REQUEST PROCESS**  
226

227     **Q.     MR. SILVER, YOU HAVE DESCRIBED IN GREAT DETAIL THE WORK**  
228           **THAT AMERITECH NEEDS TO DO IN ORDER TO PRODUCE A**  
229           **RELIABLE PRICE QUOTATION IN THE BFR PROCESS. HOW DOES**  
230           **MR. GILLAN RESPOND?**

231     **A.     Mr. Gillan makes absolutely no response to the facts I provided about the**  
232           **difficulty of responding to requests for new “ordinarily combined” UNE**  
233           **combinations with complete and accurate information. He does not address a**  
234           **single one of the practical, real-world issues I raised about the work that**  
235           **Ameritech employees must do. Instead, he sticks to his unrealistic demand that**  
236           **Ameritech somehow provide firm prices in 14 days and provide the requested**  
237           **UNE combination within an additional 10 days. His failure to address the issues**

238 that Ameritech faces in this area highlights the disconnect between his RAC  
239 proposal and reality.

240

241 **Q. DOES DR. ZOLNIEREK HAVE ANYTHING TO SAY ABOUT THE**  
242 **SPECIFIC ACTIVITIES THAT AMERITECH WOULD NEED TO**  
243 **PERFORM IN ORDER TO OFFER A NEW UNE COMBINATION THAT**  
244 **IT “ORDINARILY COMBINES” FOR ITSELF?**

245 A. No, like Mr. Gillan, Dr Zolnierек fails to address or deal with any of the facts I  
246 raised in my Direct Testimony that describe the serious work that Ameritech has  
247 to undertake to make available a new UNE combination that it “ordinarily  
248 combines” for itself.

249

250 **Q. DO YOU HAVE ANY NEW CONCERNS ABOUT MR. GILLAN’S RAC**  
251 **PROPOSAL?**

252 A. Mr. Gillan states in footnote 5, page 6 of his Rebuttal Testimony that the RAC  
253 process not just for finding out what is “ordinarily combined”, but is also for  
254 identifying new UNEs. This is alarming. Remember, the only basis for the very  
255 short intervals in the expedited RAC process is the assertion that the requested  
256 UNE combination already exists in some form on the retail side of Ameritech’s  
257 business. Now, apparently, Mr. Gillan is abandoning even this thin veneer of  
258 justification and is arguing that the RAC process is also the appropriate process to  
259 identify brand new unbundled network elements. Apparently, Mr. Gillan’s  
260 argument is that Ameritech can, within the 14 day interval allowed in his process,

261 assess the technical feasibility and the cost of an undefined, non-existent UNE  
262 and can, in another 10 days, develop all the systems needed to accurately order,  
263 provision, maintain, repair and bill the UNE. That is assertion is wildly  
264 unreasonable on its face and illustrates the overall flaw in the RAC proposal.

265

266 **Q. DR. ZOLNIEREK BELIEVES THAT ALL AMERTIECH HAS TO DO IN**  
267 **ORDER TO MEET ITS OBLIGATIONS IS TO ANSWER THE**  
268 **QUESTION “DO WE DO THIS FOR OURSELVES OR OUR**  
269 **AFFILIATES?”. HOW DO YOU RESPOND?**

270 A. Dr. Zolnierек greatly over-simplifies the issue. As a threshold matter, he didn’t  
271 pose the right question. The question is not whether Ameritech does “this for  
272 ourselves or our affiliate”. Rather, the threshold question is whether Ameritech  
273 “ordinarily combines the requested sequence of UNEs for itself.” The request  
274 itself must be for a combination of UNEs that Ameritech “ordinarily combines”  
275 for itself, not anything that Ameritech happens to combine.

276

277 More important, the process does not begin and end with the asking of a question.  
278 There is hard work that Ameritech must do to evaluate, analyze and develop  
279 procedures to order, provision, repair, maintain and bill the requested UNE on the  
280 wholesale side of the house. This cannot be done in 10 days, 24 days or even 30  
281 days. It requires up to the full 90 day interval I describe in my Rebuttal  
282 testimony.

283

284 Q. MR. GILLAN ASSERTS THAT AMERITECH IS CHARGING CLECS  
285 \$2000 JUST TO FIND OUT IF AMERITECH BELIEVES A REQUESTED  
286 COMBINATION IS "ORDINARILY COMBINED" IN ITS NETWORK.  
287 (GILLAN REBUTTAL TESTIMONY, P. 5) HOW DO YOU RESPOND?

288 A. There is no charge if Ameritech Illinois responds within 10 days that it does not  
289 "ordinarily combine" the requested UNE combination. If Ameritech Illinois does  
290 "ordinarily combine," then the CLEC has a choice about how to manage the  
291 charge. It may pay \$2000 at the time it submits the BFR or it may choose to pay  
292 the costs of developing the preliminary analysis when the preliminary analysis is  
293 complete. If the CLEC chooses to pay at the time it submits a BFR, it includes a  
294 \$2,000 deposit to cover Ameritech's preliminary costs. Ameritech guarantees that  
295 that preliminary evaluation costs incurred by the CLEC during the 30-day  
296 preliminary analysis period will not exceed \$2,000. If the costs incurred to  
297 complete the preliminary analysis are less than \$2,000, the balance of the deposit  
298 will, at the option of the CLEC, either be refunded or credited toward additional  
299 development costs authorized by the CLEC after receipt of Ameritech's  
300 preliminary analysis response. If the CLEC chooses not to make a deposit, it  
301 will pay the total preliminary evaluation costs incurred by Ameritech during the  
302 analysis period.

303

304 As my Rebuttal testimony discussed, under Ameritech's BFR for "Ordinarily  
305 Combined" UNE combinations ("BFR-OC") process, Ameritech will notify the

306 CLEC within 10 days of receiving a completed application whether Ameritech  
307 agrees that the request is an "ordinarily combined" UNE combination.  
308 If the CLEC has elected to wait to pay the cost after the preliminary analysis is  
309 completed, and the BFR-OC is rejected within the initial 10 days, the CLEC will  
310 have paid nothing. If the CLEC has elected to pay the \$2,000 with its request, and  
311 the BFR-OC is rejected, the money will be refunded in its entirety.

312

313 **V. THE PROVISION OF RATE SCHEDULES**  
314

315 **Q. ON LINES 591 THROUGH 595 OF DR. ZOLNIEREK'S REBUTTAL**  
316 **TESTIMONY HE DISAGREES WITH YOUR DIRECT TESTIMONY**  
317 **DISCUSSION RESERVING AMERITECH'S RIGHTS TO CHARGE FOR**  
318 **RATE QUOTES. PLEASE COMMENT.**

319 **A.** Dr. Zolnierrek argues that Ameritech should not be allowed to assess a fee for  
320 providing a schedule of rates without getting Commission approval. My  
321 testimony never suggested that Ameritech could begin assessing a charge without  
322 Commission approval. My testimony, and the tariff language the testimony is  
323 supporting, merely establishes a placeholder for potential action that Ameritech  
324 may take at some time in the future to establish a charge. If that time ever comes,  
325 Ameritech is fully aware that such rates would be reviewed by this Commission  
326 prior to going into effect.

327



328 Q. IN LINES 602-615, DR. ZOLINIEREK SUGGESTS THAT AMERITECH  
329 BE REQUIRED TO RECITE STATUTORY LANGUAGE IN ITS TARIFF.  
330 DOES AMERITECH AGREE?

331 A. No, Ameritech objects to adding the language. It is unnecessary to recite language  
332 in the tariff that currently exists as part of Illinois law. It is redundant and serves  
333 no purpose.

334

335 VI. RESALE  
336

337 Q. DOES MR. GILLAN ADDRESS THE RESALE ISSUE?

338 A. Yes. On page 22 Mr. Gillan concedes that Ameritech's resale tariff "on its face"  
339 complies with 13-801(f). While he and I continue to disagree on the question  
340 whether the affiliates of Ameritech Illinois are subject to 13-801, we apparently  
341 now agree that if such obligations do apply, it is not a matter to be addressed in  
342 the tariffs of Ameritech Illinois.

343

344 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

345 A. Yes.

346